



General Assembly

Distr.: General
7 November 2013
English
Original: English/French/Spanish

Human Rights Council
Working Group on the Universal Periodic Review
Eighteenth session
27 January–7 February 2014

Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21

Chile*

The present report is a summary of 29 stakeholders' submissions¹ to the universal periodic review. It follows the general guidelines adopted by the Human Rights Council in its decision 17/119. It does not contain any opinions, views or suggestions on the part of the Office of the United Nations High Commissioner for Human Rights (OHCHR), nor any judgement or determination in relation to specific claims. The information included herein has been systematically referenced in endnotes and, to the extent possible, the original texts have not been altered. As provided for in resolution 16/21 of the Human Rights Council, where appropriate, a separate section is provided for contributions by the national human rights institution of the State under review that is accredited in full compliance with the Paris Principles. The full texts of all submissions received are available on the OHCHR website. The report has been prepared taking into consideration the periodicity of the review and developments during that period.

* The present document was not edited before being sent to United Nations translation services.



I. Information provided by the accredited national human rights institution of the State under review in full compliance with the Paris Principles

A. Background and framework

1. The National Human Rights Institute (INDH) expressed the view that the State should ratify the International Labour Organization (ILO) Domestic Workers Convention, 2011 (No. 189), the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.²

2. INDH drew attention to the promulgation of the Anti-Discrimination Act (No. 20,609), which covered discrimination on grounds of sexual orientation.³ The definition of the offences of trafficking and smuggling of human beings (Act No. 20,507) had been extended to include forced labour, slavery and the removal of organs.⁴ Act No. 20,519 stipulated that anti-terrorist legislation should not be applied to minors.⁵

3. INDH reported that the Government has not established a national human rights plan.⁶ It is essential that the State establish a national preventive mechanism for the prevention of torture that would form part of INDH.⁷

B. Implementation of international human rights obligations

4. Although de jure equality exists, disparities between men and women persist, for example, in wages and political representation. Legislation that provides for the adoption of affirmative-action measures is needed.⁸

5. INDH reported instances of abuse by the police and has filed 14 complaints of torture.⁹ There have also been complaints of sexual abuse of adolescents committed by police officers during demonstrations and sexual abuse of indigenous children and women committed during police raids in indigenous territories.¹⁰

6. The rate of prison overcrowding is about 25 per cent, down from 54 per cent in 2010. The State should rationalize the use of custodial sentences, improve prison conditions and implement an effective social reintegration policy.¹¹

7. INDH said that Act No. 20,480, which establishes the offence of femicide, covers intrafamily violence only and excludes gender-based assaults and homicides committed in other affective relationships.¹²

8. INDH stated that the system of military justice has not been aligned with the standards required by the Inter-American Court of Human Rights. The adoption of due process procedures within the military justice system should be considered and its jurisdiction should be revised so that civilians are excluded from its scope.¹³

9. With regard to violations committed during the dictatorship, INDH noted that the courts of justice have a tendency to apply concepts such as partial time-barring in order to limit criminal liability.¹⁴

10. INDH said that the State should enforce Act No. 20,418, which requires municipalities to supply the morning-after pill to all women requesting it. There has been no change in the criminal provisions governing abortion, which continue to exclude any

possibility of exemption from criminal liability. A group of lawmakers submitted a bill on therapeutic abortion in 2012.¹⁵

11. INDH said that the right to education was being undermined by two discriminatory mechanisms: school fees and pupil selection. The right to education should be included within the scope of the judicial safeguard afforded by the remedy of protection established in the Constitution.¹⁶

12. INDH stated that there is a persistent pattern of discrimination against indigenous peoples, as evidenced by social indicators which continue to reflect inequalities of a structural nature. This is compounded by the fact that special criminal laws are applied to members of these population groups.¹⁷

13. Constitutional recognition of the indigenous peoples is still pending.¹⁸ The lack of legal provisions governing the right of consultation does not relieve the State of its obligation to engage in prior consultations.¹⁹ The State must establish appropriate mechanisms for determining land tenure and returning land. Sector-specific laws (the water, mining, energy and forestry codes) and environmental legislation still need to be aligned with international human rights standards.²⁰

14. With regard to migrants, legislation gives the administrative authorities discretion to order the expulsion of immigrants, contains discriminatory provisions and fails to establish sufficient judicial guarantees. The State should adopt new legislation that is in line with the current migration situation.²¹

II. Information provided by other stakeholders

A. Background and framework

1. Scope of international obligations

15. Joint Submission 8 (JS8) and Amnesty International (AI) recommended Chile to ratify the Optional Protocol to CEDAW.²²

16. Joint Submission 1 (JS1) and Joint Submission 10 (JS10) recommended that Chile ratify the third Optional Protocol to the Convention on the Rights of the Child.²³

17. Joint Submission 3 (JS3) recommended that the State ratify the Protocol of San Salvador, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the ILO Domestic Workers Convention, 2011 (No. 189), and the ILO Safety and Health in Agriculture Convention, 2001 (No. 184).²⁴

18. AI recalled that Chile had not acceded to the Convention on Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity. The Government had proposed Congress to accede to the treaty with a reservation that would defeat the purpose of the Convention.²⁵

19. JS3 and JS10 recommended that Chile ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.²⁶

2. Constitutional and legislative framework

20. The Ethics Committee against Torture (CECT) stated that the 1984 Anti-Terrorism Act (No. 18,314) establishes broad definitions that allow its provisions to be applied to acts unrelated to terrorism.²⁷ The State made a number of amendments to the Act in 2010 (through Act No. 20,467).²⁸ Joint Submission 6 (JS6) recognized that the amendments constituted a step forward but stated that they did not go far enough since it was still

possible to apply the Act to offences against property.²⁹ CECT recommended that the State repeal anti-terrorism legislation in 2014.³⁰ Joint Submission 9 (JS9) recommended that the State should not apply the Anti-Terrorism Act to cases connected with the claims of the Mapuche people.³¹

21. Joint Submission 5 (JS5) recommended that the State apply in full the provisions of ILO Convention No. 169 that relate to the obligation to consult the peoples concerned and to seek their prior, informed consent.³²

22. Joint Submission 2 (JS2) recognized that, despite significant legislative progress, the State had not finalized reforms that would incorporate the Convention on the Rights of the Child in national law.³³ JS10 stated that a bill on comprehensive protection for children that is not consonant with the Convention is before Congress.³⁴

23. Conscience and Peace Tax International (IFOR) reported that, in 2006, the Government sent to Parliament a Bill to establish conscientious objection to military service.³⁵ No report of the progress of the Bill had been traced.³⁶ IFOR recommended that Chile legislate to permit exemption from military service for conscientious objectors.³⁷

24. CIMUNDIS recommended that the bill on the establishment of the Ombudsman's Office, which is currently before Congress, should include provision for a specialized ombudsman's office for disability.³⁸

3. Institutional and human rights infrastructure and policy measures

25. JS3 stated that progress in building an institutional human rights system had been slow in spite of the role played by INDH.³⁹ JS3 recommended that the Government increase the supervisory powers of INDH; promote discussions on the establishment of an Ombudsman's office, including specialized offices; and formulate a national human rights plan drawing on broad citizen input.⁴⁰

26. CECT recalled that Chile has been due to establish a national preventive mechanism for the prevention of torture since February 2010.⁴¹ CECT recommended that the State establish a national preventive mechanism for the prevention of torture in the course of 2014.⁴²

27. JS2 considered that the institutional situation in relation to services for children and young people was alarming.⁴³ Programmes designed to protect children's rights were run separately from social monitoring programmes.⁴⁴ JS2 recommended that the State establish a specialized ombudsman's office for children which enjoyed organizational and operational independence.⁴⁵

28. JS3 expressed concern about the lack of effective public policies focused on preventing the alarming number of teenage suicides in Chile, including among persons belonging to the LGBTI community.⁴⁶ JS3 recommended that the State ensure that its policy for addressing teenage suicide is adequate and gives due attention to particularly vulnerable groups.⁴⁷

B. Cooperation with human rights mechanisms

29. JS3 reported that the State had met with representatives of civil society in Santiago to consult them about the most important subjects to include in the national report for the second universal periodic review of Chile.⁴⁸

III. Implementation of international human rights obligations

A. Equality and non-discrimination

30. Joint Submission 4 (JS4) reported that the Anti-Discrimination Act (No. 20,609), which includes sexual orientation and gender identity among the characteristics it protects, had been adopted in 2012.⁴⁹ The Act has various shortcomings, including a lack of provision for the financial compensation for victims. It also lacks affirmative-action measures and fails to establish any institutional mechanism for fighting discrimination.⁵⁰

31. With regard to discrimination against women, JS3 stated that there was still no law which amended the discriminatory marital community property regime.⁵¹ JS3 recommended that the Government approve the bill to amend the community property regime by establishing full legal capacity for women and equal rights between spouses.⁵²

32. JS4 regretted that article 373 of the Criminal Code, which establishes that “any person who in any way offends against decency or morality through serious disorderly conduct shall be sentenced to imprisonment”, continued to be used to arrest and harass persons on the grounds of their sexual orientation or gender identity. The police view expressions of affection between persons of the same sex as an offence against morality.⁵³ A bill to repeal this article has been before Congress since 2007.⁵⁴ JS7 recommended that the State expedite approval of the bill to repeal article 373 of the Criminal Code.⁵⁵

33. JS7 stated that teenage pregnancy rates and levels of homophobic and transphobic bullying are still rising. JS7 urged the State to take action to prevent discrimination and violence on grounds of gender identity and sexual orientation in educational establishments.⁵⁶

34. JS3 stated that legislative proposals on equal marriage and civil partnership agreements had made no progress. In addition, the State does not recognize the rights of transsexual and transgender persons to change their name and legal sex.⁵⁷ JS3 recommended that the State adopt a law on civil unions; enact legislation on equal marriage; and approve the bill on gender identity.⁵⁸

35. Ciudadano Global (CG) said that various forms of discrimination against different groups, including migrants, still existed.⁵⁹ According to JS2, severe discrimination persists against indigenous children, migrants, refugees, persons with disabilities, persons from disadvantaged social and economic backgrounds, and persons living in rural areas. Discrimination is most widespread in health care and education.⁶⁰

B. Right to life, liberty and security of the person

36. AI stated that the Advisory Commission for the Qualification of Enforced Disappearances, Political Executions and Victims of Political Prison and Torture, which worked from February 2010 to August 2011, confirmed five additional cases of enforced disappearances, 25 political killings and 9,795 cases of torture committed between 1973 and 1990. The Commission was criticized for a lack of transparency regarding the criteria used to include cases in its report and for its temporary nature.⁶¹

37. Fundación 1367 (F-1367) said that torture is not a specific offence under the Criminal Code.⁶² F-1367 recommended that the State define the offence of torture as a crime against humanity.⁶³

38. JS3 stated that public demonstrations had been severely repressed in recent years. Many of those arrested claimed to have been tortured and ill-treated. Girls had even

reported various forms of sexual violence.⁶⁴ F-1367 reported that in 2011 alone a total of 15,807 persons had been arrested as a result of social mobilization activities at the national level. Legal proceedings had been brought against 114 of these persons, 28 of them had received some form of sentence and only 3 had been remanded in custody.⁶⁵ F-1367 also highlighted the practice of forced nudity for minors.⁶⁶ It recommended that the State investigate, punish and provide redress for abuses suffered by teenagers, children and young people in the context of social mobilization activities during the past 23 years.⁶⁷

39. F-1367 added that it had repeatedly asked to see the updated guidelines for public order policing, but the requests had been denied on the grounds that the documents in question were confidential and their content related directly to State security.⁶⁸

40. JS10 stated that a bill which introduced a new offence of public disorder and established prison sentences for any person who occupied certain public or private areas or who concealed their identity was being discussed in Parliament.⁶⁹ JS10 called for discussion of this bill to be halted. There was a need to develop forums for human rights education in order to protect the social security of citizens, not to pass repressive laws.⁷⁰

41. JS3 stated that, in spite of various governmental measures, prisons were still seriously overcrowded at 25 per cent above capacity, infrastructure remained deficient, conditions were still unsanitary, medical care insufficient, training limited, and opportunities for work and reintegration minimal. In addition, a third of all women deprived of their liberty are pretrial detainees who have not been convicted of any offence.⁷¹ JS3 recommended that the Government revise the criminal policy favouring criminalization and imprisonment, improve infrastructure and implement policies that guarantee the rights of persons deprived of liberty.⁷²

42. JS7 stated that transsexual, transgender and transvestite persons were imprisoned with men, with no respect for their gender identity.⁷³ JS7 encouraged the State to incorporate a prohibition of discrimination on grounds of gender identity in its prison policies.⁷⁴

43. El Círculo Emancipador de Mujeres y Niñas con Discapacidad (Emancipation Circle for Women and Children with Disabilities) (CIMUNDIS) expressed regret at the lack of statistics and specific guidelines for addressing the needs of persons with disabilities in prisons.⁷⁵

44. JS3 stated that the Domestic Violence Act (No. 20,066) addresses violence against women in a fragmented manner and that there are persistent shortcomings in the provisions governing its application, such as the requirement that the abuse be habitual. The scant budget and the lack of a preventive approach, of protection for victims and of a centralized national register of cases of femicide remain major weaknesses.⁷⁶ JS7 said that lesbian victims of domestic violence and transgender women, who are constantly abused, are not recognized as victims under the protection system.⁷⁷ CIMUNDIS regretted the lack of accurate information about the incidence of sexual violence against women and girls with disabilities.⁷⁸ JS3 recommended the adoption of a comprehensive law on violence against women.⁷⁹

45. The Global Initiative to End All Corporal Punishment of Children (GIEACPC) reported that corporal punishment of children was lawful in Chile. GIEACPC hoped that States would make a specific recommendation that legislation is enacted to explicitly prohibit the corporal punishment of children in the home and in all alternative care settings.⁸⁰

46. JS3 stated that action to address trafficking in human beings is centred on criminal prosecution and that prevention, protection and victim support are accorded only secondary importance. Furthermore, there is no national register of victims and there has been no

comprehensive study on the causes of the phenomenon or on the countries of origin, transit and destination.⁸¹

47. JS1 highlighted the adoption of laws to prevent and combat the sexual exploitation of children. The areas that require most attention are connected with the development of public-sector prevention and victim support policies.⁸² JS1 recommended the adoption of programmes to prevent the sexual exploitation of minors, particularly through the use of new technology.⁸³

48. The Unified Federation of Workers (CUT) highlighted the lack of a policy for eliminating child labour. Informal child labour continues in various sectors of production, particularly in farming, shops and street vending.⁸⁴ About 67,000 children under 15 years of age and around 102,000 teenagers aged between 15 and 17 are working.⁸⁵ JS2 recommended the organization and operation of a child labour intervention network in which each institution is given specific functions and preset budgets.⁸⁶ JS10 called on the State to prepare a report on child labour containing reliable figures.⁸⁷

C. Administration of justice, including impunity, and the rule of law

49. The Agrupación de Familiares de Detenidos Desaparecidos (Association of Relatives of Missing Detainees) (AFDD) regretted the fact that members of the Supreme Court continue to be appointed through the political quota system.⁸⁸

50. JS3 stated that the military justice system continues to be used to try ordinary offences committed by persons in uniform against civilians. Complaints of police violence are heard before military courts and the level of impunity is high.⁸⁹ JS3 recommended that the military justice system be reformed to exclude civilians from its jurisdiction and be used only to hear offences arising in the context of military duties committed by military personnel on active service.⁹⁰

51. AFDD stated that the truth commissions that had operated in Chile and the creation of the Advisory Commission had made only partial contributions to the establishment of the truth since they were legally prevented from revealing the identity of violators of human rights for a period of 50 years.⁹¹ AFDD called for the establishment of a permanent truth commission to which complaints could be submitted, noting that thousands of Chileans had not reported the repression they had endured.⁹² F-1367 recommended that the State declassify the archives of the dictatorship's security apparatus and also the testimony given before the National Commission on Political Imprisonment and Torture.⁹³

52. AFDD observed that the majority of complaints relating to crimes of the dictatorship were still being processed.⁹⁴ Around 800 people have been investigated, charged and convicted but only about 70 of them were actually serving a sentence.⁹⁵ JS3 regretted that the Amnesty Decree-Law remains in force. Applying the concept of gradual time-barring and granting sentence-reducing credits to convicted officials have allowed them to remain at liberty.⁹⁶ JS3 recommended that the Amnesty Decree-Law should be repealed and that criminal cases for crimes against humanity that have been closed should be reopened.⁹⁷ AFDD urged the Government to revive a bill, submitted in 2005, that would amend articles 93 and 103 of the Code of Criminal Procedure so that the statute of limitations cannot be applied to persons who have violated human rights.⁹⁸

53. Associazione Comunità Papa Giovanni XXIII (APGXXIII) recognized that much had been done within the Juvenile Justice System following the implementation of the Law on the Penal Liability of Teenagers (Act 20,084 of 2007).⁹⁹ However, the Government should draft a policy guaranteeing children and teenagers in conflict with justice a proper trial and promoting effective social reintegration.¹⁰⁰ APGXXIII recommended the State to guarantee an effective and sufficient specialization of the stakeholders in the Juvenile

Justice System, and adopt suitable tools to begin a constructive dialogue with civil society involved in this topic.¹⁰¹

D. Freedom of expression, association and peaceful assembly, and right to participate in public and political life

54. Reporters sans frontières (RSF) stated that ownership of the Chilean media has been characterized by excessive concentration. About 95 per cent of all press titles were owned by two private media conglomerates and nearly 60 per cent of radio stations were owned by a Spanish press group. It was very difficult to launch independent media in the absence of legislation guaranteeing a balance between the various types of media.¹⁰² However, the Internet provided a genuinely free forum through which alternative information could be disseminated.¹⁰³ RSF urged Chile to adopt new legislation which would ensure a balance between the different media in the communication sector, in order to promote true pluralism of information.¹⁰⁴

55. RSF acknowledged that Chile had been the first country to incorporate the principle of net neutrality for Internet users and consumers in its legislation (Act No. 20,453 of 2010).¹⁰⁵ However, the free flow of information was limited by the fact that not everyone had access to the Internet.¹⁰⁶

56. In August 2011, the Inter-American Commission on Human Rights (IACHR) expressed its concern regarding acts of violence during the student protests in August 2011, which included the detention and disproportionate use of force against hundreds of protesters, including high school and university students. IACHR urged the State to adopt the necessary measures to ensure full respect for the rights to freedom of expression, assembly and association, imposing only those restrictions as may be strictly necessary.¹⁰⁷

57. RSF stated that journalists regularly suffered abuse on the part of the security forces when covering protest activities.¹⁰⁸ RSF urged the security forces to respect the physical integrity and work of journalists present at protests.¹⁰⁹

58. JS7 reported that a number of bills to reform the binomial electoral system had been presented in the past five years but that none of them had achieved the required quorum. JS7 recommended that the State take steps to achieve a change in the electoral system and thus consolidate democracy.¹¹⁰ JS3 stated that Parliament had not considered the law on parity between men and women when debating the Primaries Act.¹¹¹ JS6 reported that indigenous peoples were still not represented either in Congress or in the administrative regions.¹¹² In addition, Chileans abroad did not have the right to vote.¹¹³ JS3 recommended that the State should extend the right to vote to Chileans in foreign countries without conditions.¹¹⁴

E. Right to work and to just and favourable conditions of work

59. The CUT expressed regret that the right to strike was not established in the Constitution and that unionization in the public sector was not legally recognized.¹¹⁵ The Labour Code recognizes the right to strike in regulated collective bargaining procedures only, and collective bargaining coverage is very low.¹¹⁶ The CUT recommended that the State implement all the recommendations made by the ILO Committee of Experts on the Application of Conventions and Recommendations at the end of 2011 (session 82) concerning the amendment of labour law and the Constitution so as to incorporate an express recognition of the right to strike.¹¹⁷

60. JS3 commended the adoption of Act No. 20,348, which establishes equal pay for men and women. However, the wage gap had increased.¹¹⁸ With regard to seasonal work in the agricultural export sector, where most workers are women, conditions are very insecure.¹¹⁹ JS3 also raised concern about the lack of protection for women domestic workers, who are subjected to severe discrimination.¹²⁰ JS3 recommended approving the bill to amend the working hours, rest entitlements and pay structure of women domestic workers.¹²¹

61. CIMUNDIS noted that persons with disabilities are discriminated against in the enjoyment of labour rights. CIMUNDIS recommended that Act No. 18,600, which authorizes the employment of persons with mental disabilities without covering labour rights, should be repealed.¹²²

F. Right to social security and to an adequate standard of living

62. Habitat International Coalition (HIC) stated that housing policy supports the concept of the right to housing in that a financial mechanism for ensuring access to shelter has been established.¹²³ However, the policy does not take a human rights-based approach and there are no mechanisms for seeking judicial redress when rights are violated.¹²⁴ Until the State assumes a more active role in urban development planning and land management, housing for the most vulnerable segments of the population will continue to be located in substandard urban areas, so perpetuating social exclusion and spatial segregation.¹²⁵

63. JS3 stated that the individual capitalization system used by pension fund administrators continues to be based on sex-differentiated life expectancy tables. As a result, women's pensions are up to 30 per cent smaller than men's.¹²⁶

G. Right to health

64. JS3 stated that in the field of sexual and reproductive health the situation was critical. Abortion is still illegal and the State has not even initiated any democratic debate on the issue.¹²⁷ Furthermore, although health-care facilities are under a legal obligation to offer forms of contraception, this requirement is not respected because municipal authorities impose restrictions on the distribution of certain contraceptives on ideological grounds.¹²⁸ JS3 recommended that the State amend its legislation so that abortion is no longer a criminal offence, in order to guarantee the exercise of sexual rights and prevent maternal deaths caused by clandestine abortion.¹²⁹

65. JS7 reported that, in 2011, the Ministry of Health issued policy guidelines to regulate certain sexual and reproductive health-care services provided to transsexual, transgender, transvestite and intersex persons. However, it has not been possible to implement these guidelines due to a lack of knowledge of gender identity issues among personnel working in health centres. JS7 urged the State to include instruction in gender identity and sexual orientation in the training provided for health-care professionals.¹³⁰

66. Fundación Savia stated that the rights of persons affected by HIV and AIDS are limited. Following an arbitrary amendment, the regulations on HIV testing stipulate that persons with HIV must provide information about their sexual contacts and all pregnant women must take an ELISA test.¹³¹

67. CIMUNDIS said that the State does not guarantee comprehensive service coverage for persons with disabilities through the public health-care network.¹³² CIMUNDIS recommended that the State guarantee access to health-care services for persons with disabilities.¹³³

68. CG noted that migrants, and especially those in an irregular situation, had difficulty accessing the health system.¹³⁴ JS10 proposed that the Ministry of Health should develop procedures and establish a dedicated office to address the issues affecting the migrant population.¹³⁵

H. Right to education

69. JS2 stated that the education system continues to be marred by institutionalized discrimination on the basis of children's social and economic background.¹³⁶ The Corporación Nacional de Prevención del Sida (ACCIONGAY) said that discriminatory mechanisms remain in place in the education system in that educational establishments are permitted to exclude students on the basis of the social class, race, religion or gender of the children or their parents.¹³⁷

70. CG stated that although accessing the right to education had become easier for migrants in a regular situation, children of migrants in an irregular situation had major difficulties.¹³⁸ It also noted that discriminatory acts in educational establishments were often linked to the presence of migrants.¹³⁹

I. Persons with disabilities

71. According to CIMUNDIS, the ratification of the Convention on the Rights of Persons with Disabilities has not been reflected in adjustments to domestic legislation, especially in relation to access to health, education, employment, and the exercise of civil and political rights. There is also no national policy for persons with disabilities and the State institution responsible for the area (National Service for Disability) lacks authority and resources.

J. Indigenous peoples

72. JS8 reported that more than one third of the Mapuche lived below the poverty line and less than 3 per cent received education beyond high school.¹⁴⁰ JS6 stated that the highest levels of poverty were to be found among indigenous women, who also had the lowest levels of political participation and access to education and employment in Chile.¹⁴¹

73. JS9 expressed the view that successive Governments had developed monocultural policies that excluded indigenous peoples from participation in decision-making processes which affected them. Their claims are generally answered with repression and judicial proceedings.¹⁴²

74. JS6 stated that indigenous peoples were still not recognized in the Constitution. The constitutional reform bill, before the Senate since 2009, was still pending approval. The Indigenous Peoples Act (No. 19,253) was not sufficient to guarantee the recognition of indigenous peoples as subjects of collective rights.¹⁴³ JS6 recommended that the State give constitutional recognition to indigenous peoples as quickly as possible.¹⁴⁴

75. JS6 stated that compliance with ILO Convention No. 169 has been inadequate, particularly in relation to the right of prior consultation.¹⁴⁵ JS9 noted that the Government had been engaged in a questionable process of "consultation" on the development of an institutional framework for indigenous peoples since 2011.¹⁴⁶ The Government has also, without adequate consultation, initiated bills that threaten the lives of indigenous peoples (Fisheries Act, Environmental Impact Assessment System, Forestry Development Act).¹⁴⁷

76. JS6 welcomed the fact that the courts were increasingly ruling in favour of recognizing indigenous property rights and the right of indigenous peoples to prior consultation. The courts had resolved to withhold approval for certain forestry and hydroelectric projects located on Mapuche territory and for certain mining projects in Andean regions.¹⁴⁸

77. The International Network for Diplomacy Indigenous Governance Engaging in Nonviolence Organizing for Understanding & Self-Determination (INDIGENOUS) considered that States could ask Chile during its second UPR what legal and/or policy reforms the Government had undertaken to implement at the national level the United Nations Declaration on the Rights on Indigenous Peoples.¹⁴⁹

78. Several organizations, including the contributors to JS6, stated that the social protest activities of indigenous peoples were still criminalized and subject to the application of special regulations.¹⁵⁰ JS6 drew attention to the high number of acquittals obtained in proceedings brought against members of the Mapuche community under of the Anti-Terrorism Act, which was evidence of the discretionary and political manner in which the Act was being applied.¹⁵¹ IACHR urged the State to adopt measures in order to avoid in the future the excessive use of force in these operations.¹⁵²

79. According to JS5, the absence of guarantees for the territorial rights of indigenous peoples is having enormous repercussions and affecting other rights.¹⁵³ Furthermore, large-scale public and private-sector copper mining operators are extracting resources without complying with the provisions of ILO Convention No. 169 concerning participation in the benefits of such operations and are ignoring indigenous peoples' reports of negative consequences for their health and their cultural heritage.¹⁵⁴ The contributors to JS6 are of the opinion that the policies promoted by the National Indigenous Development Corporation (CONADI) are not sufficient to resolve the land issues. The Indigenous Land and Water Fund does not finance initiatives linked to ancestral territories and customary land.¹⁵⁵ JS8 recommended the Government to establish a mechanism for the restitution of ancestral lands to indigenous peoples.¹⁵⁶ JS5 recommended that the Ministry of National Assets and the Land Registry finish processing indigenous communities' applications for land demarcation within a period of no more than six months.¹⁵⁷

K. Migrants

80. JS3 noted that the Aliens Act of 1975 does not guarantee migrants' rights and is unsuited to the current migration situation.¹⁵⁸ JS3 also expressed regret that children born in Chile to foreign nationals in an irregular situation do not have the right to Chilean nationality.¹⁵⁹ JS3 recommended that the State should establish a legal framework for the protection of migrants' rights¹⁶⁰ and guarantee that children born in Chile have the right to Chilean nationality.¹⁶¹

81. CG stated that there have been instances of abuse of authority at border control posts and that in holding centres migrants due to be expelled from Chile have been subjected to degrading practices.¹⁶²

L. Right to development and environmental issues

82. ASOREFEN (the association of former employees of the State mining company, Enami) stated that the right to a pollution-free environment was recognized in the Constitution and in the law on corporate environmental responsibility. The commune of Puchuncaví (Valparaíso) was declared an area "saturated by contamination" in 1993 as it was home to more than 18 polluting industries. However, the industrial activities have

continued, causing high levels of contamination.¹⁶³ ASOREFEN recommended that the State should ensure justice and reparation for victims of the effects of environmental degradation and adopt an environmental standard for the pollutant emissions of foundries.¹⁶⁴

Notes

- ¹ The stakeholders listed below have contributed information for this summary; the full texts of all original submissions are available at: www.ohchr.org. (One asterisk denotes a national human rights institution with “A” status).

Civil society

Individual submissions

ACCIONGAY	Corporación Nacional de Prevención del Sida, Santiago, Chile
AFDD	Agrupación de Familiares de Detenidos y Desaparecidos, Santiago, Chile
AI	Amnesty International, London, UK
APGXXIII	Associazione IACHR urged the State to adopt measures in order to avoid in the future the excessive use of force in these operations Comunità Papa Giovanni XXIII, Rimini, Italy
ASOREFEN	Asociación Gremial Regional de Ex Funcionarios de ENAMI Fundición y Refinería las Ventanas, Talagante, Chile
AVCH	Asociación por el Voto de Chilenos, Francia
CECT	Comisión Ética contra la Tortura, Santiago, Chile
CG	Ciudadano Global: Fundación Servicio Jesuita a Migrantes, Santiago, Chile
CIMUNDIS	Circulo Emancipador de Mujeres y Niñas con Discapacidad de Chile. Santiago, Chile
CUT	Central Unitaria de Trabajadores, Santiago, Chile
F-1367	Fundación 1367, Santiago Chile
FS	Fundación Savia, Santiago, Chile
GIEACPC	Global Initiative to End All Corporal Punishment of Children, UK
HIC	Habitat International Coalition, Santiago, Chile
IFOR	Conscience and Peace Tax International, Leuven, Belgium
INDIGENOUS	International Network for Diplomacy Indigenous Governance Engaging in Nonviolence Organizing for Understanding & Self-Determination, Honolulu, United States
RSF	Reporters sans frontières, Paris, France

Joint Submissions

JS1	Joint Submission N° 1 – ECPAT International, ONG RAICES, ONG PAICABI, Bangkok, Thailand
JS2	Joint Submission N° 2 – Fundación Marista de Solidaridad Internacional, Bureau International Catholique de l’Enfance, Istituto Internazionale Maria Ausiliatrice, International Volunteerism Organisation for Women, Education, Development & others, Geneva, Switzerland
JS3	Joint Submission N° 3 – Corporación Humanas & others, Chile, Santiago, Chile
JS4	Joint Submission N° 4 – Movimiento de Integración y Liberación Homosexual (Movilh) & others, Chile
JS5	Joint Submission N° 5 – Comunidad Indígena Atacameña de Taira and Comunidad Indígena Atacameña San Francisco de Chiu Chiu, Calama, Chile
JS6	Joint Submission N° 6 – Observatorio de Derechos de los Pueblos Indígena & others, Temuco, Chile
JS7	Joint Submission N° 7 – Organización de Transexuales por la Dignidad de la Diversidad (OTD) & others, Rancagua, Chile
JS8	Joint Submission N°8 – Unrepresented Nations and Peoples Organization (UNPO) & others, The Hague, Netherlands
JS9	Joint Submission N° 9 – Asociación Auspice Stella (Comisión Mapuche de Derechos Humanos) & others, Chile

- JS10 Joint Submission N° 10, ROIJ, Red ONG Infancia y Juventud Chile, Santiago, Chile
- National Human Rights Institution*
- INDH Instituto Nacional de Derechos Humanos*, Santiago, Chile
- Regional Intergovernmental Organization*
- IACHR Inter-American Commission on Human Rights, Washington, DC, USA
- ² NHRI, page 1.
- ³ NHRI, page 1.
- ⁴ NHRI, page 1.
- ⁵ NHRI, page 1.
- ⁶ NHRI, page 1.
- ⁷ NHRI, page 3.
- ⁸ NHRI, page 5.
- ⁹ NHRI, page 3.
- ¹⁰ NHRI, page 2.
- ¹¹ NHRI, page 3.
- ¹² NHRI, page 5.
- ¹³ NHRI, page 4.
- ¹⁴ INDH, page 4.
- ¹⁵ NHRI, page 5.
- ¹⁶ NHRI, page 3.
- ¹⁷ NHRI, page 2.
- ¹⁸ NHRI, page 2.
- ¹⁹ NHRI, page 2.
- ²⁰ NHRI, page 2.
- ²¹ NHRI, page 4.
- ²² JS8, page 6 and AI, page 3. See also JS3, for 3.
- ²³ JS1, pages 2–3 and JS10 pages 2–3.
- ²⁴ JS3, para. 3.
- ²⁵ AI, page 2.
- ²⁶ JS3, para. 65 (C) and JS10, page 4.
- ²⁷ Ethics Committee against Torture, para. 4.1.
- ²⁸ Ethics Committee against Torture, para. 4.4.
- ²⁹ JS6, para. 34. See also JS3, para. 16.
- ³⁰ Ethics Committee against Torture, para. 4.5.
- ³¹ JS9, page 10. See also AI pages 5–6 and JS3, para. 61 (c).
- ³² JS5, para. 22. See also AI pages 5–6 and JS3, para. 61 (a).
- ³³ JS2, para. 33.
- ³⁴ JS10, page 1. See also JS1, page 4 and JS3, para. 53.
- ³⁵ IFOR, para. 2.
- ³⁶ IFOR, para. 4.
- ³⁷ IFOR, para. 16.
- ³⁸ NHRI, page 1. See also JS3, for 3. 68 (e).
- ³⁹ JS3, paras. 4–5. See also AI, page 2.
- ⁴⁰ JS3, para. 6 (a)–6 (d). See also AI, page 5.
- ⁴¹ Ethics Committee against Torture, para. 2.1.
- ⁴² Ethics Committee against Torture, para. 2.7 (a). See also F-1367, pages 6–7 and JS3, paras. 22 and 29 (e–f).
- ⁴³ JS2, para. 38.
- ⁴⁴ JS2, para. 39.
- ⁴⁵ JS2, para. 43 (c). See also JS1 page 5 and JS10, pages 8–9.
- ⁴⁶ JS3, para. 54.
- ⁴⁷ JS3, para. 55 (D).
- ⁴⁸ JS3, para. 2.
- ⁴⁹ JS4, para. 2. See also ACCIONGAY, page 3, para 1.
- ⁵⁰ JS4, para. 9. See also AI, page 1. See also JS3, paras. 7 and 14 (a).

- ⁵¹ JS3, para. 13.
⁵² JS3, para. 14 (e).
⁵³ JS4, paras. 14–16. See also JS7, para. 8.
⁵⁴ JS4, para. 18.
⁵⁵ JS7, para. 10.
⁵⁶ JS7, paras. 13–14.
⁵⁷ JS3, paras. 8–10. See also AI pages 3–6 and JS3, paras. 25 and 28.
⁵⁸ JS3, para. 14 (b–d). See also AI pages 5, and JS4, para. 32 (b, d–e) and JS7, para. 12.
⁵⁹ CG, page 3.
⁶⁰ JS2, para. 6.
⁶¹ AI, page 2. See also AFDD, page 6 and F-1367, para. 1.
⁶² F-1367, para. 29.
⁶³ NHRI, page 6. See also AI, page 5, Ethical Committee against Torture, JS4, para. 2.5 and 2.7 (b) and JS3, para. 29 (e).
⁶⁴ JS3, para. 20. See also AI, page 1.
⁶⁵ F-1367, para. 9.
⁶⁶ F-1367, para. 21. See also JS2, para. 13.
⁶⁷ F-1367, page 6. See also AFDD, page 6, AI, page 4 and JS2, para. 14 (e).
⁶⁸ F-1367, para. 11. See also AI, page 5.
⁶⁹ JS10, page 9.
⁷⁰ JS10, page 9. See also AI, page 3.
⁷¹ JS3, paras. 26–27.
⁷² JS3, para. 29 (k).
⁷³ JS7, para. 25.
⁷⁴ JS7, para. 26.
⁷⁵ NHRI, page 2.
⁷⁶ JS3, para. 23. See also CG, page 2.
⁷⁷ JS7, para. 23.
⁷⁸ NHRI, page 4. See also JS3, paras. 67 and 68 (d).
⁷⁹ JS3, para. 29 (h).
⁸⁰ GIEACPC, page 1. See also JS2, para. 43 (d).
⁸¹ JS3, para. 25. See also CG, pages 1–2 and JS1, page 3.
⁸² JS1, page 2.
⁸³ JS1, page 3.
⁸⁴ CUT, page 2.
⁸⁵ CUT, page 1.
⁸⁶ JS2, para. 28 (a).
⁸⁷ JS10, page 9.
⁸⁸ AFDD, page 3.
⁸⁹ JS3, para. 30.
⁹⁰ JS3, para. 31 (a). See also AI, pages 1–2 and 5.
⁹¹ AFDD, page 5.
⁹² AFDD, page 5.
⁹³ F-1367, page 6.
⁹⁴ AFDD, page 2. See also JS3, para. 16.
⁹⁵ AFDD, page 3.
⁹⁶ JS3, para. 17. See also F-1367, para. 5.
⁹⁷ JS3, para. 29 (a). See also AI, pages 1 and 5, CECT, para. 8.5 and F-1367, page 6.
⁹⁸ AFDD, page 4. See also JS3, para. 29 (d).
⁹⁹ APGXXIII, page 2.
¹⁰⁰ APGXXIII, page 3. See also JS2, para. 16.
¹⁰¹ APGXXIII, page 5. See also JS2, para. 22 (a–c) and JS3, para. 55 (c).
¹⁰² RSF, page 1.
¹⁰³ RSF, page 2.
¹⁰⁴ RSF, page 2.
¹⁰⁵ RSF, page 2.

- 106 RSF, page 2.
- 107 See IACHR, page 6. See also IACHR press release 87/12 “IACHR Expresses Concern for Violence Against Student Protests in Chile” available at http://www.oas.org/en/iachr/media_center/PReleases/2011/087.asp.
- 108 RSF, page 1.
- 109 RSF, page 2.
- 110 JS7, para. 4.
- 111 JS3, para. 33.
- 112 JS6, para. 5.
- 113 JS3, para. 33.
- 114 JS3, para. 35 (b). See also AVCH, pages 1–4.
- 115 CUT, page 3.
- 116 CUT, page 3.
- 117 CUT, pages 4–5.
- 118 JS3, para. 37.
- 119 JS3, para. 38.
- 120 JS3, para. 39.
- 121 JS3, para. 41 (d).
- 122 CIMUNDIS, page 2.
- 123 HIC, para. 4.
- 124 HIC, para. 23.3.
- 125 HIC, para. 23.7.
- 126 JS3, para. 13.
- 127 JS3, paras. 42–43.
- 128 JS3, para. 44. See also AI pages 2–4.
- 129 JS3, para. 46 (b).
- 130 JS7, paras. 15–16.
- 131 FS, page 2.
- 132 NHRI, page 2.
- 133 NHRI, page 3.
- 134 CG, page 5.
- 135 JS10, page 7.
- 136 JS2, para. 12. See also JS3, para. 47.
- 137 ACCIONGAY, page 3, paras. 1–3.
- 138 CG, page 4.
- 139 CG, page 5.
- 140 JS8, para. 1.
- 141 JS6, paras. 26–27.
- 142 JS9, page 2.
- 143 JS6, paras. 6–7.
- 144 JS6, para. 20. See also JS8, page 6 and JS9, page 10.
- 145 JS6, para. 10.
- 146 JS9, page 2.
- 147 JS9, page 10. See also AI, page 3, JS3, para. 57 And JS6, paras. 13–17.
- 148 JS6, para. 25.
- 149 INDIGENOUS, page 2.
- 150 JS6, para. 31. See also AFDD, page 7, AI, page 4, JS3, para. 21, JS8, para. 17, JS9, page 4 and JS10, pages 7–8.
- 151 JS6, para. 32. See also AI, page 1.
- 152 See IACHR, page 6. See also IACHR press release 97/12 “IACHR Condemns Injuries to Mapuche Children in Police Operation in Chile” available at http://www.oas.org/en/iachr/media_center/PReleases/2012/097.asp.
- 153 JS5, para. 11.
- 154 JS5, para. 10.
- 155 JS6, para. 19. See also JS3, para. 9.
- 156 JS8, page 6.

¹⁵⁷ JS5, para. 21.

¹⁵⁸ JS3, para. 62. See also CG, page 2.

¹⁵⁹ JS3, para. 63. See also JS10, pages 3–5.

¹⁶⁰ JS3, para. 65 (a). See also AI, page 5.

¹⁶¹ JS3, para. 65 (b). See also JS10, page 6.

¹⁶² CG, page 2.

¹⁶³ ASOREFEN, paras. 1–4.

¹⁶⁴ ASOREFEN, paras. 9–10.
